



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF D-F-D-M-

DATE: MAR. 16, 2018'

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a financial engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree or the equivalent, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

On appeal, the Petitioner submits additional documentation and argues that he is eligible for a national interest waiver based on the demand for financial engineers, as well as his "expertise that focuses on helping efficient and modern projects become more financially feasible."

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.—

(A) In general. — Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer —

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

## II. ANALYSIS

The Petitioner holds the foreign equivalent of a U.S. baccalaureate degree in business administration, and has progressive post-baccalaureate experience in that specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Director determined that the Petitioner qualified for classification as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner intends to work as a consultant offering financial engineering services to clients.<sup>4</sup> In a February 2017 letter accompanying the petition, he stated: "I plan to continue working in investment and infrastructure project financing, especially in the energy and environmental markets." In response to the Director's RFE, he stated that he had recently begun working as a financial consultant for [REDACTED] and he described several projects for which he expects to provide financial engineering consulting services. He explained that he intends to contribute to five projects including developing a financial restructuring plan for a Brazilian aircraft manufacturer to attract investors and

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> In his initial filing, the Petitioner also claimed that he meets the requirements of the underlying classification as an individual of exceptional ability. However, as the record demonstrates his eligibility as an advanced degree professional, we need not consider whether the Petitioner also qualifies as an individual of exceptional ability.

<sup>4</sup> The Petitioner explains on appeal that "a financial engineer designs the funding and financial operations of a project, as opposed to an architect or engineer that designs the physical structure and construction of a project."

begin U.S. operations; financial planning for the development of a pharmaceutical company medical unit; a financial restructuring to develop three new units providing full-service preventative medical care; developing financial plan for a coastal risk consulting company; and, conducting financial research on the production and distribution costs for a new assembly plant for a Brazilian poultry equipment manufacturer. He further stated that he is developing a feasibility study and market analysis for the [REDACTED] to provide structuration and development of 38 low income housing units in South Florida. We find that the Petitioner's proposed work, which offers economic benefits to his clients through financial engineering services, has substantial merit.

The record, however, does not demonstrate that the Petitioner's proposed endeavor is of national importance. His appellate brief contends that his work on the projects noted above is of national importance because it is critical to each project's success, and each one addresses an issue that is of national importance. For example, in support of the national importance of the Petitioner's proposed work on the [REDACTED] and [REDACTED] projects he presents media articles and a joint report from the [REDACTED] advocating the widespread application of systems engineering tools to improve health care delivery. He states that "although local," his work on both projects "represent(s) a national problem."

Similarly, in support of the national importance of his proposed work with a Brazilian aircraft manufacturer, the Petitioner presents evidence discussing the role of aerospace manufacturing in "fostering regional and national economic prosperity." He also provides excerpts from testimony from a hearing of the U.S. Department of Transportation stating that aviation manufacturing is a "critical sector of our nation's economy." He further states that even a single aircraft manufacturing plant opening in the U.S. has national importance because that plant relies on "thousands of suppliers across the United States." He argues that his work drafting a financial restructuring plan for the Brazilian aircraft manufacturer is analogous to [REDACTED] establishing a manufacturing plant in South Carolina. He points to an article published on the U.S. Department of Commerce website in which the Secretary of Commerce, Penny Pritzker, commends [REDACTED] for making a foreign direct investment in the United States.

In determining national importance, the relevant question is not the importance of the fields or industries in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner's statements reflect his intentions to provide a valuable service to prospective clients, he has not offered sufficient evidence to demonstrate that his proposed endeavor is of national importance. In the same way that *Dhanasar* finds that a classroom teacher's proposed endeavor is not nationally important because the effects of the work are primarily limited to the teacher's school or district, we find that the proposed endeavor in this case will not sufficiently extend beyond the Petitioner's clients to impact the fields of infrastructure, health care delivery, aviation manufacturing, or low income housing more broadly than a single plant, clinic, or project.<sup>5</sup> Nor has he shown his work

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<sup>5</sup> See *Id.* at 893.

would have broader implications for the field of financial engineering. Accordingly, the Petitioner has not met the first prong of the *Dhanasar* framework.

**B. Well Positioned to Advance the Proposed Endeavor**

The Petitioner submitted academic records, letters confirming his employment history, evidence of his credentials, and various awards and certificates, including documentation that he has served as a financial engineer specializing in financing for large-scale infrastructure projects with the [REDACTED] for more than 20 years. He also provided evidence that he worked closely with the Brazilian government on multiple federal infrastructure financing projects including creation of the financial budget for a new cell phone and landline project for the country. [REDACTED] chief executive officer of [REDACTED] provides a letter stating that he and the Petitioner were responsible for this project valued at 5 billion dollars and financed by the central government of Brazil. He comments that “[The Petitioner] is a specialist in project finance and planning. He is also able to most accurately project expenses and revenue from any infrastructure project as well as assess risks involved.”

In addition, the Petitioner offered letters of recommendation from former colleagues, supervisors, and industry professionals, attesting to his expertise and positive impact on project finance. The references discussed the Petitioner’s talent, dedication, and contributions to many public works projects in Brazil. For example, a letter of support from [REDACTED] administrative and finance director of [REDACTED] comments that the Petitioner’s work was critical to a project to modernize the water and sanitation system of [REDACTED] Mexico, and that his “financial expertise in the infrastructure financing and the construction industry was important to the development of a construction timeline, tailor-made financial solutions, and effective funding allocation for both the building and operating phases of the project.” Similarly, [REDACTED] head of North American operations for [REDACTED] states that the Petitioner’s expertise is “extensive and well documented through years of major professional achievements.” Accordingly, the Petitioner has provided evidence that he is well positioned to advance his proposed endeavor of providing financial engineering services to clients, and we find therefore that he satisfies the second prong of the *Dhanasar* framework.

**C. Balancing Factors to Determine Waiver’s Benefit to the United States**

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. He indicates that it would be difficult for him to obtain a labor certification due to the timing of financial engineering projects and the fact that he intends to be an independent contractor working on multiple projects for several clients. However, as the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of D-F-D-M-*, ID# 1037887 (AAO Mar. 16, 2018)